UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

FILED
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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY AD
DEPUTY

ROCKY LEEPER

Plaintiff,

-against-

Travis County Sheriff's Office
Sheriff Greg Hamilton
Officer B. Payne (#5169)
Officer Joshua J. Johnson (#3734)
Officer Bradley Ellis,
Nurse Amy Smith
Claudia Garcia (#5122)
Nurse Prince
Travis County Sheriff's Deputies
"Jane Doe" and "John Doe" 1-10

CASE No.:
A16CV0819 RP

COMPLAINT

PLAINTIFF- DEMAND
TRIAL BY JURY

Pro Se

JURISDICTION

1. Plaintiff brings this action for compensatory damages, punitive damages PURSUANT to 42 U.S. Code § 1983 and 42 u.s.c. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution for violations of my civil rights, as said rights are secured by said statutes and the Constitution of the United States.

2. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ.P.38(b).

PARTIES

3. Plaintiff, ROCKY LEEPER, is a citizen of the United States. Has suffered at the hands of the Defendants aggravation of neuropathy of the upper and lower extremities, and had continuous pain, strength limitations. Plaintiff is an individual with disabilities that cause a mobility impairment. Rocky Leeper uses a motorized wheelchair for mobility.

4. All defendants are being sued in both their individual and official capacity.

5. All defendants work at: TCCC, Travis County Correctional Complex, 3614 Bill Price Road, Del Valle, TX 78617.

FACTUAL ALLEGATIONS

6. Plaintiff was held for 24 hours in downtown Austin in a non-ADA cell.

7. Plaintiff was told "That's as close as it gets here." Plaintiff attempted to get the name of the person who said that without results.

8. Plaintiff was transported from the downtown jail to TCCC in the back of a van with no seatbelt and without his wheelchair.

9. 07/23/2014 to 07/24/2014 Plaintiff in non-ADA cell in David North Wing.

10. There was a partition in the cell that made it impossible to reach the toilet from a wheelchair.

11. There were no rails on the walls.

12. Plaintiff was required to drag himself across the floor littered with pubic hair, feces and used toilet paper to reach the rusty, filthy toilet.

13. Plaintiff had to climb onto the toilet using the walls, partition and toilet, without the use of rails.

14. Plaintiff was unable to use the sink, out of reach, situated behind the toilet.

15. Plaintiff was unable to use the mirror above the sink because of its height.

16. Plaintiff had to haphazardly climb on his wheelchair to get into the bed that was at least 4 foot off the floor.

17. When the door was unlocked, plaintiff was unable to open it by himself due to the weight, leaving him trapped in his cell during recreational hours.

18. The fiberglass shower tub had rails that were falling off. It did not drain and was equipped with a plastic shower stool that was in disrepair.

19. The steps were removed from plaintiff's wheelchair. Plaintiff's feet dragged on the pavement for days, resulting in open bleeding wounds.

20. Nurse Amy Smith ordered plaintiff moved to cell in David North Wing.

21. Plaintiff was assigned a non-ADA cell in the David North Wing. Plaintiff asked if there was an ADA cell available. An officer who refused to identify himself stated "there's hole in the floor, that makes it ADA." He then locked the door and left the unit.

22. 08/08/2014 & 08/11/2014 Plaintiff submitted Legal Research Requests for "Current Criminal Case (D1DC14900054)" including "Discovery," "Information on the laws and forms necessary to request a bond hearing," "Laws governing medical bonds and PR bonds both Texas and Federal."

23. Staff Response for both requests was "Please contact your attorney, John Stark for this info."

24. Richard T. Jones is named as Plaintiff's attorney on both Requests.

25. When Plaintiff sat down with his attorney, Richard T. Jones, Richard told Plaintiff that the reason he refused to speak to him on the phone was because the Sheriff's Department is disregarding attorney-client privilege by recording attorney-client phone calls.

26. 08/19/2014 asked for male doctor- refused

27. 08/22/2014 at 5:30 p.m. Plaintiff was held down after a medical event and exposed to inmates and staff having urinated on myself.

28. I was refused permission to change my urine-soaked clothing for several hours.

29. I was laughed at and humiliated by inmates and staff.

30. I sat in my own filth for hours placed in a cell that I could only use toilet water in an attempt to clean myself.

31. Officer B. Payne (#5169) fabricated an incident report accusing plaintiff of disrespecting jail staff, disrupting jail activity and "falsely reporting" for having a seizure.

32. Officer Payne claims Nurse Higgs and Nurse Hill examined plaintiff and stated that plaintiff was in fact not having a seizure and faking it.

33. Neither Nurse Higgs nor Nurse Hill ever examined plaintiff.

34. There is no record of any examination.

35. Plaintiff pulled from his cell and transferred to Building 2 which is non-ADA compliant.

36. Plaintiff never allowed to appear to Disciplinary Board.

37. I was denied witnesses during disiplanary hearings.

38. Plaintiff was unable to access the mirror, intercom and light switch because of the height.

39. Plaintiff was left in full illumination 24 hours a day for 3 days, and near dark for 2 days.

40. Plaintiff was required to shower in a Non-ADA Compliant shower with a plastic shower stool.

41. Access to the shower was blocked with a curb barrier about 8 foot from the shower.

42. Plaintiff had to drag himself over the curb barrier and along the rubber floor mat ladened with soap scum, hair and filth, climb onto the plastic shower stool without the use of rails, and back to his wheelchair.

43. After four days, exhausted by the physical effort required, plaintiff became unable to accomplish this fruitless activity.

44. Plaintiff's spouse filed Formal Grievance against Travis County Sheriff's Office.

45. Plaintiff was isolated and segregated for a medical condition.

46. As a pre-trial detainee I was consistently punished and treated as guilty while I awaited trial.

47. Plaintiff was placed on 23 hour a day lockdown, disciplinary separation and administration separation for having a seizure.

48. This action is in violation of the ADA sec. 12132. "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation or be denied benefits of services, programs, or activities of a public entity, or be subject to discrimination by any such entity."

49. 08/26/2014 Plaintiff was awoken in the middle of the night by a large security officer.

50. He required plaintiff to sign another notice of Disciplinary Board.

51. The security officer did not turn on the light when plaintiff requested it and refused to allow plaintiff to read the notice.

52. Plaintiff informed the officer that he had just been medicated and did not understand, the officer forcefully said "It doesn't matter, sign here!"

53. 08/27/2014 Plaintiff gave a Medline request to the nurse to get an appointment with mental health to get a prescription for Haldol and benidryl to help with the hallucinations and to help define reality from nightmares.

54. 08/29/2014 Plaintiff received a notice of Disciplinary Board served on 08/22/2014 and was never allowed to appear at a disciplinary hearing.

55. 09/15/2014 Plaintiff in Building 2, non-ADA compliant.

56. 09/22/2014 Plaintiff in medical wing, non-ADA compliant- bed was on the floor. Plaintiff requested to be moved.

57. 09/30/2014 Plaintiff was not allowed to transport his wheelchair from TCCC to downtown court appearance.

58. Plaintiff was provided a child's-size wheelchair.

59. Plaintiff was forced to sit sideways in pain for 9 hours in said wheelchair awaiting the court appearance.

60. Medical "treatments" were forced upon plaintiff by untrained security staff after a medical waiver had been signed.

61. Not enough wheelchairs at the jail.

62. Plaintiff's wheelchair was "borrowed" on many occasions, leaving plaintiff stranded in his bunk, unable to make his way to the toilet, showers, food, dayroom or recreation.

63. Sheriff's Deputies practice a pattern of regularly disposing of grievance forms.

64. Plaintiff was forced to sit for hours at a time in his wheelchair after being incontinent and urinating after a seizure.

65. These actions violate the basic concept of a persons dignity.

66. Plaintiff was denied Haldol for weeks, causing hallucinations, nightmares and panic attacks.

67. Plaintiff requested numerous times through an Open Records Request for nurses' state license numbers.

68. Plaintiff's requests were never answered.

69. The Sheriff's Department has no plan, procedure or practice in place for the transportation of wheelchair-bound detainees.

70. Plaintiff was told by an officer that if he could not get on the bus, he "was refusing to go to court."

71. Despite repeated medical orders and numerous requests, security placed plaintiff in non-ADA cells.

72. Each time security found plaintiff having a seizure, they would fabricate a charge of rule violations to have plaintiff removed from their unit.

73. The Sheriff's Department medical staff has no way of weighing a wheelchair-bound patient.

74. While in unit 12-C2-103B, Nurse Prince had identified one of the drugs plaintiff was taking as an HIV drug publicly, in front of staff and inmates.

75. This resulted in rumors that the plaintiff had AIDS in this unit.

76. This was a cause for significant problems in this unit.

77. Officer B. Payne (#5169), Officer Bradley Ellis, Officer Joshua J. Johnson (#3734) and other John and Jane Does were all participants in forcibly removing me from my wheelchair and dropping me face down on a concrete floor.

78. Officer Joshua J. Johnson (#3734) grasped my shirt and held it tight enough so that I could not breathe.

79. On two other occasions, Officer Johnson tied a sheet around plaintiff's body and wheelchair making it difficult for plaintiff to breathe.

80. Officer B. Payne (#5169) physically restrained plaintiff after a seizure event and placed plaintiff in a stress position.

81. He sat on plaintiff's chest making it difficult for plaintiff to breathe.

FIRST CLAIM FOR RELIEF

82. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

83. All of the aforementioned acts deprived plaintiff of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S. Code § 1983

84. The acts complained of were carried out by the aforementioned individual defendants in their capacities as Sheriff's Deputies, pursuant to the customs, usages, practices, procedures, and the rules of the Travis County Sheriff's Office, all under the supervision of ranking officers of said department.

85. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure of rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

86. The acts complained of deprived plaintiff of his rights:

a. Not to be deprived of liberty without due process of law;
b. To be free from seizure and arrest not based upon probable cause;
c. To be free from unwarranted and malicious criminal prosecution;
d. Not to have excessive force imposed upon me;
e. Denial of medical services;
f. Not to have summary punishment imposed upon me; and
g. To receive equal protection under the law.

SECOND CLAIM FOR RELIEF
CAUSE OF ACTION:
FAILURE TO INTERVENE UNDER 42 U.S. Code § 1983

87. By this reference, the plaintiff incorporates each and every allegation and averment set forth in the above paragraphs of this complaint as though fully set forth herein.

88. Each and every individual defendant had an affirmative duty to intervene on the plaintiff's behalf to prevent the violation to his constitutional rights, as more fully set forth above.

89. The individual defendants failed to intervene on the plaintiff's behalf to prevent the violation of his constitutional rights, despite having had a realistic and reasonable opportunity to do so.

90. As a consequence of said defendants' actions, plaintiff suffered loss of liberty, humiliation, mental anguish, acute pain and suffering, depression, loss of weight, and his constitutional rights were violated. Plaintiff herby demands compensatory

damages and punitive damages, in the amount of to be determined at trial, against each of the defendants, individually and severally.

AS A THIRD CAUSE OF ACTION:

91. Defendants, as a matter of policy and practice, has with deliberate indifference, failed to properly sanction or discipline Sheriff's Deputies including the defendants in this case, for violations of the constitutional rights of citizens, thereby causing Sheriff's deputies including defendants in this case, to engage in unlawful conduct.

92. Defendants, though the legal theory or Respondent Superior, are responsible for the acts and lack of actions of fellow defendants that resulted in the injuries to plaintiff.

93. The aforesaid events underlying plaintiff's factual allegations were not isolated incidents nor was it isolated to these officers, despite evidence of their repeat routine misconduct. The defendants have been aware for some time, from lawsuits, notices of claim, complaints filed, and judicial rulings suppressing evidence and finding officers incredible as a matter of law, that a disturbing number of Deputies unlawfully bring charges against detainees with no legal basis, use excessive force against citizens and create charges in and effort to cover up their misconduct, perjure themselves in charging instruments and testimony, and fail to intervene in and report the obviously illegal actions of their fellow officers. Nevertheless, the defendants have allowed policies and practices that allow the aforementioned to persist.

94. All of the aforementioned has created a climate where officers lie to investigators, in paperwork and charging instruments, and testify falsely, with no fear of reprisal.

95. The defendants are aware that all the aforementioned has resulted in violations of citizens' constitutional rights. Despite such notice, the defendants have failed to take corrective action. This failure and these policies caused the officers in the present case to violate plaintiff's civil rights, without fear of reprisal.

96. Plaintiff has been damaged as a result of the deliberate indifference of the defendants.

WHEREFORE, plaintiff respectfully requests judgment against the Defendants as follows:

I. On the First Cause of Action against all the defendants, compensatory and punitive damages in an amount to be determined at trial, and costs under 42 U.S.C. Section 1988;

II. On the Second Cause of Action against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officers Defendants in the amount to be determined at trial;

III. On the Third Cause of Action, against all Defendants, compensatory damages in an amount to be determined at trial , and punitive damages against the Officers Defendants in the amount to be determined at trial; and

IV. Such other and further relief as this Court may deem necessary in the interest of justice.

Dated: 6-29-2016

Pro Se

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